



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding BAGRY BROS. ORCHARDS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, LRSD, FFL / MNSDS-DR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear crossed applications.

The Landlord's August 1, 2024 application pursuant to the Act is for:

- A Monetary Order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- An authorization to retain all or a portion of the security deposit, under section 38;
- An authorization to recover the filing fee for this application, under section 72;

The Tenants' August 12, 2024 application pursuant to the Act is for:

- An Order for the Landlord to return the security deposit, pursuant to section 38;

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Landlord acknowledges service of the Tenants' Proceeding Package and evidence, and is duly served in accordance with the Act.

Tenant RM acknowledges service of the Landlord's Proceeding Package and evidence, and is duly served in accordance with the Act.

The Landlord was approved for substituted service for Tenant AB in a decision dated August 12, 2024. The Landlord states that they sent the Proceeding Package, evidence,

as well as the substituted service decision to both the Tenants. The Landlord has uploaded proof of serving Tenant AB via email on August 13, 2024, and I deem that Tenant AB was served on August 16, 2024, the third day after the email was sent, in accordance with sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested? Or should the security deposit be returned to the Tenants?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Facts and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant in my decision.

Both parties agree that a written tenancy agreement was signed by the Landlord's agent JB, Tenant RM, and Tenant AB on July 12, 2024; a copy of this tenancy agreement was submitted into evidence. The rental period was supposed to commence on August 1, 2024, with a monthly rent of \$3,950.00 due on the first day of each month, and a security deposit in the amount of \$1,975.00 was paid to the Landlord on July 12, 2024. The rental period was for a fixed term effective until July 31, 2025, defaulting to a month-to-month format afterwards.

As discussed at the hearing, I find that the four basic components of a contract were satisfied between the parties on July 12, 2024. Specifically, there was the Offer (rental unit in exchange for money), Acceptance (signing of the written tenancy agreement), Consideration (security deposit exchange), and Capacity (both parties entered into the agreement voluntarily, free from undue influence, and with an understanding of the nature of the agreement).

However, the Tenants never started to occupy the rental unit due to an unforeseen and extremely unfortunate medical circumstance affecting Tenant RM; ultimately the Tenants decided to exit the agreement. Tenant RM and witness HDM communicated this circumstance with Landlord JB on July 16, 2024. Although there may have been some initial miscommunication, Landlord JB confirms that they were made aware on July 16, 2024, that the Tenants were no longer interested in renting the unit.

JB states that they immediately sought new renters, firstly by contacting previously interested applicants to see if there was any interest, and when that failed, he posted the rental unit back onto the market. JB has submitted evidence to substantiate that they procured an advertising agency's service for \$25.00 plus tax on July 16, 2024.

JB states that they were unable to find interest for the original rental period beginning on August 1, 2024, and thus they started offering for August 15, 2024, and JB reduced the monthly rent from \$3,950.00 to \$3,650.00 per month. JB states this was an effort to mitigate losses for the Landlord as well as the Tenants by quickly securing new tenants and thus minimizing the loss of rental income. This was also partially because the Landlord is a seasonal business operator in the agriculture industry, and this happened to be the yearly peak period of harvest. JB states that they were able to secure a new tenancy agreement with new tenants, which commenced on August 15, 2024.

Meanwhile, the Tenants have applied for the return of their security deposit, which the Landlord has claimed in their application as partial compensation for their total monetary losses.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

The Landlord has made three separate monetary claims in their application:

- 1) \$1,950.00 for half a month of unpaid rent from August 1 – 15, 2024
- 2) \$3,450.00 for the difference in monthly rental income applied to the 11.5 months of the remaining duration of the fixed term;
- 3) \$25.00 reimbursement of advertising costs.

Section 45 of the Act stipulates that a Tenant cannot end a tenancy on a date earlier than the conclusion of a fixed term. Accordingly, despite the circumstances and wishes of the Tenants, I find that there was no valid notice to end the tenancy and that this tenancy continued until new tenants were found on August 15, 2024. I conclude that the Landlord is entitled to half a month of rent for August 2024 and award the \$1,950.00 sought under that claim.

I also find that the Landlord has provided sufficient evidence to prove that they paid \$25.00 plus tax for the advertising services. I award the Landlord \$25.00 to recover this

cost, which was incurred because of the unilateral exit of the Tenants from the fixed term.

The \$300.00 per month in lost rental revenue claimed by the Landlord due to the reduced rental price was a major point of contention during the hearing. I note that Part D of *Policy Guideline #5 – Duty to Minimize Loss* discusses the particulars that are to be considered in such circumstances. It states:

“If a landlord is claiming compensation for lost rental income, evidence showing the steps taken to rent the rental unit should be submitted or the claim may be reduced or denied. If a landlord is claiming a loss because they rented the rental unit for less money than under the previous tenancy, or they were unable to rent the unit, evidence like advertisements showing the price of rent for similar rental units, or evidence of the vacancy rate in the location of the rental unit may be relevant.”

I find that the Landlord’s evidence package does not include advertisements showing the price of rent for similar rental units, or evidence of the vacancy rate in the location of the rental unit, or other similar items that would rationalize the concept that the Tenants should be responsible for the full difference in monthly rent for the duration of the fixed term, minus the half month of August 2024. However, the Landlord has presented convincing testimony, and I believe they were acting honestly and in good faith, genuinely trying to re-rent the unit as soon as possible when they decided to drop the rental price.

As per *Police Guideline #16 – Compensation for Damage or Loss*, Part C, the value of the damage or loss is established by the evidence. The Landlord has not submitted enough evidence, such as the concepts discussed in *Policy Guideline #5*, to fully establish the value of this claim. I find that the loss of rental income with regards to the \$300.00 difference in rent between the tenancies presents a circumstance where establishing the value of the loss incurred by the Landlord **to which the Tenants bear responsibility** is not straightforward, given the lack of evidence.

Instead, I conclude that the Landlord has still established that there has been an infraction of their legal right and so I shall award nominal damages with respect to this particular claim. I have decided to award the Landlord \$200.00 for each month of rent remaining on the fixed term from August 15, 2024, to July 31, 2025 (11.5 months). The total award is \$2,300.00 under this claim.

Is the Landlord entitled to retain all or a portion of the Tenants’ security deposit in partial satisfaction of the monetary award requested? Or should the security deposit be returned to the Tenants?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant’s forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute

resolution to claim against it. Given the inability of the Tenants to end the tenancy earlier than the date of the fixed term, I conclude that this tenancy ended on August 15, 2024, when the Landlord secured new tenants. By this time, the Landlord had already made their claim against the full security deposit.

Under section 72 of the Act, I allow the Landlord to retain the Tenants' security deposit of \$1,975.00, in partial satisfaction of the monetary award.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$2,400.00** under the following terms:

Monetary Issue	Granted Amount
August 1 – 15, 2024 rent	\$1,950.00
Advertising costs	\$25.00
Difference in rental income	\$2,300.00
Security deposit	-\$1,975.00
Filing fee	\$100.00
Total Amount	\$2,400.00

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

The Tenants' application for the return of their security deposit under section 38 of the Act is dismissed, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 15, 2024

Residential Tenancy Branch